IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM

THE HON'BLE MR.JUSTICE **V.SIVAGNANAM**

Crl.O.P.No.27594 of 2022
in
Crl.A.Sr.No.53914 of 2022

N.D.Venkatesan ... Petitioner

Vs.

K.M.Hariharan ... Respondent

Prayer:- Criminal Original Petition has been filed under Section 378(4) of Cr.P.C., praying to grant leave to the petitioner to appeal against the judgment of the acquittal of the respondent made by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruvannamalai in S.T.C.No.43 of 2016 judgment dated 16.09.2022.

For Petitioner : Mr.A.Nagarajan

For Respondent : Mr.B.Jawahar

ORDER

This petition has been filed by the petitioner/complainant to grant leave to file an appeal against the judgment dated 16.09.2022 made in S.T.C.No. 43 of 2016 on the file of the learned Judicial Magistrate, Fast

Track Court (Magisterial Level), Tiruvannamalai.

2. The learned counsel for the petitioner contended that the respondent/accused borrowed a sum of Rs.1,50,000/- on 15.07.2015 from the complainant has not repaid the amount. The respondent/accused had issued a post dated cheque bearing No.279407 dated 09.09.2015 drawn on ICICI bank, Tiruvannamalai branch for a sum of Rs.1,50,000/-. When the cheque was presented for collection, it was returned with an endorsement "Insufficient funds". After causing statutory notice, a private complaint has been filed for action under Section 138 of N.I.Act, before the Trial Court. To prove the allegations, the complainant examined himself as PW.1 and marked nine (9) Exhibits as Ex.P1 to Ex.P9. On the side of the accused, the defendant examined himself as DW.1 and marked five (5) Exhibits as Ex.D1 to Ex.D5.

3. The learned counsel for the petitioner further submitted that the Trial Court simply dismissed the complaint on the ground that the

complainant has not provided proper reasoning as to why such loans inclusive of the present cheque case loan was issued to the family, who were a defaulter for years. The order of the Trial Court is unsustainable, since the petitioner/complainant produced sufficient evidence for payment of hand loan and disputed cheque, the said cheque was not disputed by the accused. Therefore, the observation of the Trial Court on the ground that since there was huge amount received by the accused family, again lending hand loan was not the probability on hypothetical proposition. Hence seeks grant leave to file appeal against acquittal.

4. The learned counsel for the respondent objected to grant leave to the petitioner on the ground that the complainant issued a notice to him on 09.12.2015, in which, he has clearly stated that for receipt of interest, he issued receipt whenever receiving interest. Further, in the notice it is clearly stated by the complainant that the respondent/accused had not paid single pie towards neither the interest nor principal. In such circumstances, the allegations of payment of Rs.1,50,000/- on 15.07.2015 is improbable.

Therefore, the Trial Court rightly acquitted the accused and there is no reason to grant permission to file appeal against acquittal, hence pleaded to dismiss the petition.

5. I have considered the submissions of the parties and perused the materials available on record.

6. On a perusal of the records, the fact reveals that the petitioner / complainant filed a private complaint against the respondent / accused for the offence under Section 138 of Negotiable Instruments Act. The allegations in the complaint is that on 15.07.2015, the accused borrowed a sum of Rs.1,50,000/- from him. For repayment, he issued post dated cheque. When the cheque was presented for collection, the same was returned. Hence the complaint. The Trial Court after considering the evidence before the Court found the very same money transaction between the petitioner and the respondent/accused. Admittedly there is a family debts of mortgage amount of Rs.32,00,000/- triable to the accused. For the said amount, no interest has been paid by the accused. In such circumstances, again

Rs.1,50,000/- given by the complainant to the accused is improbable. Hence disbelieved the allegations of the complainant that he had paid Rs.1,50,000/- as hand loan to the accused. Therefore, dismissed the complaint and acquitted the accused. Further on perusal of the records the reply notice issued by the complainant is marked in the case as Ex.P6. The learned counsel for the respondent relying upon that paragraph 5 to support his arguments that the accused had not paid interest towards the mortgage amount. It is acceptable by the complainant in paragraph 5 of the notice. The complainant admittedly stated that the accused had not paid a single pie towards interest and principal on the mortgage till the date. Further it is stated by the complainant in the notice that he had issued reply receipt for the payment of interest. If it is true for receiving interest is having habit of receiving receipt, he ought to have some documents for payment of Rs.1,50,000/- on 15.07.2015. Since the respondent/accused family is having mortgage deed of Rs.32,00,000/- in the absence of any material evidence in support of the loan amount of Rs.1,50,000/- on 15.07.2015 and

I find no infirmity in the acquittal order passed by the Trial Court and no *prima facie* case has been made out either on facts or law and no merit in this case. As such, this Court is inclined to dismiss the petition.

8. This Criminal Original petition is dismissed accordingly. Consequently, Criminal Appeal is rejected at the S.R., stage itself.

31.01.2023

rpl

To

The Judicial Magistrate No.V, Coimbatore.

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